80-6341

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980

EDDIE THOMPSON, JR. — APPELLANT-DEFENDANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE-PLAINTIFF

ON APPEAL FROM KENTON CIRCUIT COURT
SECOND DIVISION

JURISDICTIONAL STATEMENT - STATE CRIMINAL CASE

Eddie Thompson Jr.
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CERTIFICATION:

I hereby certify that a copy of the foregoing Jurisdictional Statement has been served upon Mr. Martin J. Huelsman, Assistant Kenton County Attorney, Judge Douglas Stephens, Kenton District Court, City-County Building, Covington, Kentucky 41011; and Mr. Steve Beshear, Attorney General, Frankfort, Kentucky 40601, this 12 day of March, 1981.

Eddie Thompson Jr.
EDDIE THOMPSON, JR., Pro Se

QUESTIONS PRESENTED

1. When no valid warrant had issued, or when a warrant issues without probable cuase (e.g. when one who has no authority by law to sign a warrant, signs a warrant) is the ensuing prosecution in violation of the Fourth Amendment to the United States Constitution? U.S. Constitution, 4th, 14th Amendments.

2. Where defendant has been denied constitutional rights in the trial court, was defendant entitled to an Appeal? Kentucky Constitution, Section 115; U.S. Constitution 8th, 14th Amendments.

3. Must a dismissal of an Appeal be on the merits?

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VS.

COMMONWEALTH OF KENTUCKY — APPELLEE-PLAINTIFF

ON APPEAL FROM KENTON CIRCUIT COURT
SECOND DIVISION

Eddie Thompson, Jr. appeals from the following opinions below.

CITATIONS TO OPINIONS BELOW

On July 15, 1980, the Kenton Circuit Court dismissed Appellant's Appeals 78-X-45, and 79-X-43 (App. P. 7A and 39A) from the Kenton District Court, Case Numbers 78-M-1186 and 78-M-2912. Motion to Alter, Amend, Vacate, Set Aside, or Correct was overruled on July 29, 1980 (App. P. 8A and 40A). Discretionary Review denied by Kentucky Supreme Court on February 13, 1981 (App. P. 4A).

The Kenton District Court issued a criminal summons (App. P. 9A) pursuant to Kenton Circuit Court orders of July 15, 1980 (App. P. 7A and 39A). The fines were paid.

Case Number 78-X-45 had been previously dismissed by the Kenton Circuit Court on February 22, 1979 (App. P. 10A). Motion for Reconsideration overruled on March 8, 1979; Motion to Modify overruled on March 15, 1979 (App. P. 11A); Discretionary Review denied by Kentucky Supreme Court on October 23, 1979; Writ of Certiorari denied by United States Supreme Court on February 19, 1980.

JURISDICTION

In dismissing Appellant's Appeals, the Kenton Circuit Court (a Court of Appeals) placed an unconstitutional restriction on Appellant in violation of the Kentucky Constitution, Section 115, and the United States Constitution, 14th Amendment.

The Jurisdiction of this Court is invoked pursuant to 28 USC 1257(1) and (2) as this Appeal draws into the question of: The validity of an arrest without a warrant and/or a warrant signed without probable cause; and subsequently the validity of a state's decisions that ignores and/or violates the states procedural rules and applicable court decisions, all to the demise of defendant's constitutional rights. U.S. Constitution, 4th, 8th, and 14th Amendments.

The Jurisdiction of this Court is sustained by Williams v Oklahoma 395 U.S. 458, Payton vs New York 100 S ct 1371, Peterson v Greenville 373 US 244, Cohn v California 403 US 15.

In the event this Court does not consider appeal the proper mode of review, Appellant requests that papers whereupon this Appeal be taken be regarded and treated as a Petition for a Writ of Certiorari pursuant to 28 USC 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution

Fourth Amendment - The right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be siezed.

Eighth Amendment - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment - Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

28 USC 1257 provides that final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By Appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By Appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

28 USC 2103 If an Appeal to the Supreme Court is improvidently taken from the decision of the highest court of a state, or of a United States Court of Appeals, in a case where the proper mode of review is by petition for Certiorari, this alone shall not be grounds for dismissal; but the papers whereon the Appeal was taken shall be regarded and acted on as a petition for Writ of Certiorari and as if duly presented to the Supreme Court at the time the Appeal was taken. Where such case there appears to be no reasonable ground for granting a petition for Writ of Certiorari it shall be competent for the Supreme Court to adjudge the Respondent reasonable damages for his delay, and single or double costs.

KENTUCKY CONSTITUTION

SECTION 115. In all cases, civil and criminal, there shall be allowed as a matter of right at least one Appeal to another court, except the Commonwealth may not appeal from a judgment of acquittal in a criminal case, other than for the purpose of securing a certification of law, and the general assembly may prescribe that there shall be no appeal from that portion of a judgment dissolving a marriage. Procedural Rules shall provide for expeditious and inexpensive appeals. Appeals shall be upon the record and not by trial de novo.

KENTUCKY STATUTES

KRS 24A.120. Civil and probate jurisdiction. -- District court shall have exclusive jurisdiction in:

(1) Civil cases in which the amount in controversy does not exceed one thousand five hundred dollars ($1,500), exclusive of interest and costs except matters affecting title to real estate and matters of equity; however, nothing herein shall prohibit execution levy on real estate in enforcement of judgment of district court; and

(2) Matters involving probate, except matters contested in an adversary proceeding. Such adversary proceeding shall be filed in circuit court in accordance with the Kentucky Rules of Civil Procedure and shall not be considered an appeal;

(3) Matters not provided for by statute to be commenced in circuit court shall be deemed to be nonadversarial within the meaning of subsection (2) of this section and therefore are within the jurisdiction of the district court.

189.520(2) No person shall operate a motor vehicle anywhere in this state while under the influence of intoxicating beverages or any drug which may impair one's driving ability.

189.520(3) No peace officer or state police officer shall fail to enforce this section.

189/520(4) In any criminal prosecution for a violation of subsection (1) and (2) of this section, wherein the defendant is charged with having operated a vehicle while under the influence of intoxicating beverages, the amount of alcohol in the defendant's blood as determined at the time of making a chemical analysis of his blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was 0.05 percent or less by weight of alcohol in such blood, it shall be presumed that the defendant was not under the influence of intoxicating beverages;

(b) If there was more than 0.05 percent, but less than 0.10 percent by weight of alcohol in such blood, such fact shall not constitute a presumption that the defendant either was or was not under the influence of intoxicating beverage, but such fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant;

(c) If there was 0.10 percent or more by weight of alcohol in such blood, it shall be presumed that the defendant was under the influence of intoxicating beverages.

(5) The provisions of subsection (4) of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the defendant was under the influence of intoxicating beverage.

(6) No person may be compelled to submit to any test in subsection(4) of this section, but his refusal to submit to such test shall result in revocation of his license as provided in K.R.S. 186.565(3)

186.565(1) Any person who operates a motor vehicle in this state is deemed to have given his consent to a chemical test of his blood, breath, urine or saliva for the purpose of determining the alcoholic content of his blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle in this

state while under the influence of intoxicating beverages. The test shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages. The law enforcement agency by which the officer is employed shall designate which of the aforesaid tests shall be administered, and provide necessary equipment. The state shall provide one (1) breathalyzer and simulating unit for each county, paid for by state funds.

186.565(3) If a person under arrests refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement officer as provided in subsection (1) of this section, the requesting officer shall warn the person of the effect of his refusal to submit to the test.. If the person again refuses, none shall be given, but the Department of Transportation, upon the receipt of a sworn report of the law enforcement officer that he had reasonalbe grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle in this state while under the influence of intoxicating beverages, that the person refused to submit to the test upon request of the law enforcement officer, and that the person again refused to submit to the test after the law enforcement officer warned him of the effect of his refusal, the Department shall immediately serve notice to the person by certified mail to the last known residence address of the person or if address is unknown, to the last known business address of the person to appear before the secretary or his duly authorized agent and show cause why his license to operate a motor vehicle, or if said person is a nonresident his privilege to operate a motor vehicle within this state should not be rovoked; or if the person is a resident without a license or permit to operate a motor vehicle in this state why that person should not be denied the assurance of a license qr permit, the hearing shall be scheduled as early as practical but not sooner than ten (10) dyas after the issuance of the notice and at a time and place designated by the secretary.

Kentucky Civil Rule 72.04

The record on appeal to the Circuit Court shall consist of the entire original record of proceedings in the District Court, including untranscribed mechanical recordings made under the supervision and remaining in the custody of the district court clerk. It need not be certified unless and until the court of appeals grants a motion for review of the final action of the circuit court disposing of appeal.

CR 75.07(1) The clerk of the trial court shall prepare and certify the entire original record on file in his office, in accordance with the requirements of paragraphs (9) and (10) of this rule, including the deisgnations or stipulations or parties as to evidence and proceedings stenographically reported and a certified copy (rather than the original) of the docket assigned to the action, but excluding depositions not read in evidence.

(9) All parts of the record on appeal shall be arranged in the order in which they were filed or entered. If the record composes more than 150 pages it shall be divided into two or more volumes of not more than 150 pages each. Each volume shall be securely bound at the left side if the record is on letter size paper, or at the top if it is on legal size paper.

(10) There shall be a general index at the beginning of the record and an index to each volume in the front thereof which shall show, in the order in which they appear, the pages on which all pleadings, orders, judgments, instructions, and papers may be found, together with the name of each witness and the pages on which his examination and cross-examination appear. All exhibits filed with the record shall be sufficiently identified and the index shall direct where they may be found.

Kentucky Criminal Rules

R. Cr 12.02 - Applicability of Civil Rules. -- Civil Rules 72, 73.01 (1) and (2), 73.08, 75.01, 75.06 to 75.15, inclusive and 76 shall apply also in criminal actions, except that an appeal from a judgment of the circuit court imposing a sentence of death or life imprisonment or imprisonment for 20 years or more shall be taken directly to the Supreme Court. Payment of the filing fees mentioned in Rules 72.06 and 76.42 (2) is required. In an appeal from a final order of judgment in a proceeding under Rule 11.42 the "original record" mentioned in Civil Rule 75.01 shall include the record of the proceeding in which the judgment sought to be vacated or modified was entered, but need not include any protion thereof that was stenographically reported but has not been transcribed.

R. Cr 12.04 - When and how taken. -- (1) An appeal is taken by filing a notice of appeal in the trial court.

(2) The notice of appeal shall name all of the appellants and appellees and designate the judgment from which the appeal is being taken. The clerk shall serve notice of the filing of the notice of appeal by mailing a copy thereof to the clerk of the

appellate court and to the attorney for each appellee, shall note on each copy thus served the date on which the notice of appeal was filed, and shall note in the docket the names of the parties served and date or dates on which the copies were mailed.

(3) The time within which an appeal may be taken shall be to (10) days after the date of entry of the judgment or order from which it is taken, subject to Rule 12.06, but if a timely motion has been made for a new trial or in arrest of judgment, an appeal from a judgment of conviction may be taken within ten (10) days after the date of entry of the order denying the motion; provided, however, that in the case of a verdict, the appeal must be from the order overruling or denying the motion, and the review on appeal shall be limited to the grounds timely raised by the motion as provided by Rule 10.06.

(4) The timely filing of a notice of appeal from a judgment of the district court shall stay proceedings on the judgment as long as the case remains on appeal, except for the requirement of bail.

STATEMENT OF THE CASE

The instant Appeal arises from the dismissal of two (2) timely perfected appeals from the Kenton District Court to the Kenton Circuit Court.

These Appeals were dismissed by the Kenton Circuit Court, without a hearing or any reasons given therefor.

The records of the Kenton District Court were tampered with. The clerk in the District Court neglected to prepare the records and transmit them to the Circuit Court as required by Kentucky law, Criminal Rules - R. Cr. 12.02, R. Cr. 12.04; Civil Rules, CR 72.04, CR 75.07(1)(9)(10).

In 78-M-1186, Judge Stephens, a District Court judge, instructed (in Appellant's presence) a deputy clerk not to permit Appellant to file an Appeal, even though Notice of Appeal and Appeal cost had been paid. Copies of the tape of the trial (78-M-1186) were never made available to appellant even though Appellant was paying for them.

In 78-M-2912, Judge Stephens refused to permit Appellant to see the records before or after the trial.

To fully understand these cases, we need to go just prior to the first arrest on April 15, 1978.

Sometime between April 3, 1978, and April 15, 1978, Appellant had a telephone conversation with Mr. Richard Nelson (counsel for Peoples Liberty Bank in an illegal forclosure) concerning Appellant's voluntarily moving from his (Appellant's) home. Appellant told Mr. Nelson he would not move, whereupon Mr. Nelson informed Appellant that if he did not move, he (Mr. Nelson) would have appellant "taken care of". When Appellant asked Mr. Nelson what he meant, Mr. Nelson hung up.

Unknown to Appellant at the time, Mr. Nelson had had Judge Goodenough (without notice of hearing) to sign a writ of possession on April 12, 1978. App. P. 65A.

On April 15, 1978, 3 police officers beat Appellant. One officer, T. Finan, had produced a gun other than his service revolver and threatened to put Appellant in the river. As it turned out, Officer Finan was one of the officers admittedly hired by Mr. Nelson to take over Appellant's home. App. P. 62A.

On the night of the arrest and beating of Appellant, he was not told of any charges against him.

The next day Appellant was taken to police headquarters, finger printed, and told he was being charged with assault (on a police officer), disorderly conduct, resisting arrest, and D.U.I. Appellant was then released on his own recognizance. None of the arresting officers made any sworn complaint as to any charges against Appellant. Following his release, Appellant filed a complaint against the police officers pursuant to KRS 95.450. No hearing was ever held on those charges. Appellant heard no more about 78-M-1186 until August 21, 1978. App. P. 15A. This will be explained later.

Without notice or hearing, while appellant was at work, on July 19, 1978, Sheriff Deputies executed the void "writ of possession" dated April 12, 1978. App. P. 65A. When Appellant questioned a deputy about the order, a deputy told Appellant to see the judge. The judge acknowledge there was no hearing and that the order was probably not valid.

When Appellant arrived back home, he commenced putting his possessions back into his home; whereupon police officers Bernard Smith and James Liles came up and began threatening Appellant if he did not leave his home. The police officers produced a copy of a lease, claiming that they had leased Appellant's home. App. P. 66A. (It might be noted that the lease was on a monthly basis and was dated for the 19th of the month, but the rent was due on the 5th of the month.)

Police officers occupied Appellant's home 24 hours-a-day (in 8-hour shifts) until July 27, 1978, when a group of concerned citizens petitioned the Mayor and Commissioners to ascertain why armed police officers were occupying Appellant's home. After police officers left (July 27, 1978) Appellant moved his possessions back into his home.

On July 29, 1978, Mr. Richard Slukich, an attorney, came by Appellant's home and told Appellant he (Mr. Slukich) had bought Appellant's home, and if Appellant did not leave, he (Mr. Slukich) would have him (Appellant) arrested for criminal trespassing. Appellant asked Mr. Slukich to show him his deed, whereon, Mr. Slukich said he did not have it with him and left.

A couple of hours later, 4 policemen came to Appellants home and arrested him on a warrant signed by Mr. John Elfers, Kenton County Attorney. The bond was set at $1000.00. (At the time, under Kentucky law, Mr. Elfers had no authority to sign a warrant.) Appellant was eligible for release on his own recognizance. However, Judge Condit, a District Court judge, raised bond from $1,000.00 to $2,000.00 and set as a condition of release that Appellant could not go home. This was contrary to K.R.S. 24A.120.

A trial on the criminal trespassing charges (78-M-2912) was scheduled for August 14, 1978, but was switched to August 15, 1978. App. P. 17A.

Upon the insistance of Mr. Slukich, Judge Stephens ordered Appellant jailed until the trial on August 25, 1978 (78-M-2912).

Appellant attempted to appeal that order, but Judge Stephens never signed an order. A deputy clerk signed the order of commitment in violation of state law. App. P. 61A.

Judge Condit was present at the hearing on August 15, 1978. Judge Condit signed an order setting 78-M-1186 (assault, dororderly conduct, resisting arrest, and D.U.I) instead of 78-M-2912 (criminal trespassing) for trial. App. P. 15A.

On August 22, 1978, Appellant was taken before a District judge and told he would be tried in 78-M-1186 instead of 78-M-2912; and that the assault charge would be dropped and Appellant would be tried on resisting arrest, disorderly conduct, and D.U.I only. Appellant objected, to no avail.

Appellant was paraded through the halls of the courthouse, handcuffed, on three occasions, where persons who served on the jury observed him.

The trial was postponed for one week because counsel hired to represent Appellant came to court on August 25, 1978, thinking 78-M-2912 would be tried.

At the trial, separation of witnesses was ordered, yet, one of the police officers was allowed to remain during the course of the trial. This officer claimed Appellant had run him off the road, but admitted he did not cite Appellant for running him off the road (which Appellant denies).

The officer then claimed Appellant kicked him in the groin and he was injured and had to go to the hospital from the scene (which Appellant denies), but he (the officer) could not produce medical records or evidence that he had been kicked. Then the officer claimed Appellant was offered a breathalyzer, but he (Appellant) had refused it, in violation of 186.565(3). The officer admitted that he had not reported any violation which was mandadory by law. (Appellant denied that he was drunk.) The prosecution argued that if Appellant refused the breathalyzer, he must have been drunk. Counsel for Appellant refused to ask the officer why he had not asked for Appellant's driver's license, if he had commited a traffic violation or was driving under the influence of alcohol. Counsel also neglected to present Appellant's character witnesses or question the officers about their sworn statements, App. P. 31A, 32A, 34A, or to present them to the jury.

After the trial, hired counsel acknolwedged that he could not appeal the case, whereupon Appellant moved the trial court to strike his counsel and allow him to proceed pro se. Said motion was granted. App. P. 28A.

Judge Stephens, who was not the trial Judge, told Appellant he could not appeal 78-M-1186 and instructed a duty clerk not to prepare the record for appeal or to provide the tapes of the trial.

A timely Appeal was perfected in 78-M-1186.

On September 29, 1978, Judge Stephens attempted to hold a trial in 78-M-2912 with a pre-selected jury (3 of the 6 members of the September 1, 1978 trial -- 78-M-1186 -- were seated over Appellant's objections). For no apparent reason, Judge Stephens declared a mistrial. Judge Stephens said he was raising Appellant's bond from $2,000.00 to $5,000.00, in violation of the Kentucky Uniform Schedule of Bail. App. P. 36A. Judge Stephens also ordered Appellant jailed, also for no apparent reason. Again, Judge Stephens signed no order. A deputy clerk signed the order of commitment. App. P. 61A. After 4 days in jail, Appellant was told his original bond was reinstated, and Appellant was released from jail. No order was signed.

At the insistence of Mr. Slukich, a police officer had filed burglary charges against Appellant. The Kenton County Commonwealth Attorney told Appellant that he (the Commonwealth Attorney) would drop the burglary charges if Appellant would forget about his home.

On January 11, 1979, Judge Stephens ordered a pre-trial conference in 78-M-2912. At the conference, the Prosecutor recommended that the matter be continued until Kenton Circuit Case #33430 had a final determination. Judge Stephens concurred. App. P. 53A. A Petition for Certiorari, 80-1358, was filed in Kenton Circuit Court Case Number 33430 on February 12, 1980.

Appellant was a candidate for Mayor of the City of Covington in the November 1979 General Election.

On August 31, 1979, on his own motion, Judge Stephens set 78-M-2912 for trial for September 13, 1979. App. P. 51A. The prosectuion filed no pre-trial memorandum as ordered by the court. Appellant objected to a trial before Judge Stephens, to no avail. Separation of witnesses was ordered by the court; yet, Judge Stephens permitted Mr. Slukich, the attorney who brought the trespassing charges, to remain and assist the Prosecutor. Judge Stephens refused to order witnesses to produce records subpoenaed by Appellant or to instruct the jury that criminal intent had to be shown. Judge Stephens permitted the Prosecutor to make improper arguments to the jury and refused to allow Appellant to see the record before and after the trial.

Motion to Arrest Judgment and/or Directed Verdict was denied on September 19, 1979. Notice of Appeal was filed on September 27, 1979. Statement of Appeal was filed in the Kenton Circuit Court on October 4, 1979 (79-X-43).

In an effort to affect the election, Judge Stephens and Judge Gilliece (the Judge whom the Appeal was before) signed separate warrants on November 2 and November 5, 1979. App. P. 48A, 49A.

On November 26, 1979, Appellant was arrested and jailed alleging failure to appear in 78-M-2912, 78-CI-1747. Case #78-CI-1747 was a civil case where Judge Gilliece was permitting fraud to be practiced in his court, which Appellant has since been dismissed from.

On November 27, 1979, Appellant was brought before Judge Stephens in 78-M-2912, even though the case was on Appeal in the Kenton Circuit Court, 79-X-43, and supersedeas bond had been executed in the Kenton District court.

Judge Stephens ordered Appellant jailed for 90 days and said he owed the court $801.00, which Appellant did not owe.

Judge Stephens had a deputy clerk sign the order of commitment. App. P. 46A. Appellant was not allowed to appeal because Judge Stephens did not sign an order, according to Judge Gilliece, Kenton Circuit Judge. Recognizing he had no jurisdiction over 78-M-2912, Judge Stephens called his efforts 79-M-5251.

On July 15, 1980, Judge Gilliece entered 2 Judgments. App. P. 7A, 39A. In 78-X-1186 (which is 78-X-45) Judge Gilliece says all previous orders of the District and Circuit Courts stand and shall be complied with. We note on the Order (App. P. 7A) Appellant is referred to as defendant rather than Appellant in the Kenton Circuit Court. In 79-X-43 (78-M-2912) Judge Gilliece ordered the Appeal dismissed and referred to the District Court for execution of the sentence.

Motion to Alter, Amend, Vacate, Set aside, or Correct the Judgment was overruled on July 29, 1980 in both cases. App. P. 8A, 40A.

Pursuant to Judge Gilliece's Judgments of July 15, 1980, Kenton District Court issued a criminal summons on July 18, 1980 (App. P. 9A) for Appellant to appear in the Kenton District Court on August 1, 1980.

Appellant had not failed to comply with any orders of the court and had not been ordered to report to the Comprehensive Care Center, nor has Appellant's driver's license ever been revoked or suspended.

Appellant was advised that Judge Stephens would be on the bench on August 1, 1980, and if Appellant could not pay the fines, Judge Stephens would again jail Appellant.

Discretionary Review was denied by the Kentucky Court of Appelas and Kentucky Supreme Courts. The latter on February 13, 1981. App. P. 4A.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The instant Appeals present important questions of whether in the absence of any recognized exception to the warrant requirements of the Fourth Amendment, police officers may arrest without valid warrant or probable cause and/or whether in such case, a state appellate court's arbitrary denial of the right of appeal is an "unreasonalbe distinction" which the Fourteenth Amendment forbids the states to make.

Under Kentucky law the denial of an appeal is an unconstitutional restriction of the rights of the Appellant. Kentucky Constitution, Section 115, Cole v Stephens 582 S.W. 2d 657.

. . . and where there was no review of the record, no search for reversible error by the court below and no determination of whether defendant received a fair trial . . . . the defendant had not had the benefit of an appeal. Taylor v Commonwealth 568 S.W. 2d 52. And the Complete original record must be indexed. Kentucky Civil Rule, CR 72. 04, CR 75.07 etc., Criminal Rules, R Cr 12.02 and R Cr 12.04.

Since statutes and rules making an appeal in a criminal case a matter of right, the burden of showing that that right has been abused through the prosecution of frivolous litigation should at all times, be on the party making the suggestion of frivolity. It was not the burden of the petitioner to show that his appeal has merit, in the sense that he is bound or even likely, to prevail ultimately. He is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts. Coppedge v United States 369 US 438, 448.

A decision of a state appellate court which despite a statute providing for an appeal as a matter of right, wholly denies any right of appeal is an "unreasonable distinction" which the Fourth Amendment forbids the state to make. Williams v Oklahoma 395 US 458, 23 LEd 2d 440, 89 S Ct 1818.

Let us examine the arrest of April 15, 1978, more closely. After the police officers had beaten Appellant, the following day the officers charged Appellant with assault on a police officer, disorderly conduct, resisting arrest and D.U.I. At the trial Officer Epperson claimed Appellant ran him off the road, that he did not pursue Appellant for running him off the road, or cite Appellant for running him off the road, but that he quietly followed Appellant about 3 blocks, where Appellant had parked his truck; that he called Appellant and Appellant appeared to be drunk; that he did not know Appellant but he offerred to call a cab and send Appellant home, that Appellant refused, then he offerred to call a friend of Appellant; that he then gave Appellant a sobriety test (which Appellant denied); that he patted Appellant down and put one handcuff on Appellant, when Appellant whirled and kicked him in the groin (but he could not produce any medical evidence that he had been kicked or otherwise injured by Appellant, even though he alleges he was taken to the hospital).

At no time did Officer Epperson ever tell Appellant he was under arrest on any charge.

Officer Epperson also claimed Appellant was offerred a breathalyzer, but claimed that Appellant refused, in violation of K.R.S. 189.520 and 189.565(3).

Although a statutory requirement, Officer Epperson did admit that Appellant's driver's license has never been suspended or revoked.

Recognizing the statutory presumption of K.R.S. 189.520, the Prosecution argued that Appellant must have been drunk (improper argument) and that Appellant had refused the breathalyzer.

This and the parading of Appellant (Appellant was illegally arrested and jailed on another charge without bond) where he could be seen by prospective jurors, and the neglect of hired counsel to vigorously defend the charges was a violation of Appellant's constitutional rights, U.S. Constitution Eighth and Fourteenth Amendments.

Bail previously allowed may not be revoked without reasoning for revocation. Marcum v Broughton 442 S.W. 2d 307.

The traditional right to bail before conviction permits the unhampered preparation of a defense (the truth) and serves to prevent the infliction of punishment prior to conviction. Unless this right is preserved, the presumption of innocence would lose its meaning . . . Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment. Stack v Boyce 342 US 1 96 LEd 3, 72 S Ct 1.

Under Kentucky law, where there is no corroborating circumstance, it is the duty of the court to instruct the jury to acquit. Craft v Commonwealth 80 Ky 349, Dudley v Commonwealth 42 S.W. 2d 900 . . . The jury could not be instructed on the presumption of K.R.S. 189.520(2) nor could the verdict be based on conjecture. Randle v Shelton 293 S.W. 2d 559.

Judge Stephens was well aware of the efforts to frame Appellant. That is why he instructed the deputy clerk not to make tapes of the proceeding available to Appellant.

Appellant did receive the tapes in 78-M-2912 - 79-X-43, but much of the trial proceeding was missing.

A motion for dismissal calls for a decision on the merits, CR 76.34(4), e.g. App. P. 5A . In the instant cases, no motion was made, and the appeal court (Kention Circuit Court) could state no reason to dismiss.

The manner in which the record is to be prepared is set out in Kentucky Civil Rules, CR 72.04, 75.07, etc.

In 78-M-1186 (78-X-45) no supersedeas bond was required on appeal. App. P. 29A .

Under Kentucky law failure to follow the rules is cause for an appeal to be dismissed as void . . . . and the rules apply to police court as well as other courts. White v Commonwealth 481 S.W. 2d 656.

In Case Number 78-M-2912 (79-X-43), everyone, including Judge Condit, Judge Stephens, and Judge Gilliece knew Mr. John Elfers had no authority to sign a warrant for the arrest of Appellant or anyone else.

An arrest without a valid warrant is violative of the Fourth Amendment. Giordenello v U.S. 357 US 480.

A conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged violates due process. Vachon v New Hampshire 38 LEd 2d 666.

Under Kentucky law, K.R.S. 511.060, the offense of criminal trespass is a lesser crime which is included in the crime of burglary. Martin v Commonwealth 571 S.W. 613.

Statutes of this kind being penal in nature, have in general been construed somewhat strictly, and not affording a substitute for other adequate civil remedies for trespass.

Accordingly, such a statute cannot be made to serve the purpose of an action for trespass or ejectment, and if the defendant when warned not to enter, was in possession or had title or right of entry, a prosecution under the statute cannot be sustained.

It is an abuse of a penal statute relating to criminal trespass to use it to try disputed rights in real property. Criminal intent is an essential element of the statutory offense of trespass, even though the statute is silent as to intent, and if the act prohibited is committed in good faith under claim of right or title, although the accused is mistaken as to his right, unless it is committed with force or violence or breach of peace, no conviction will lie, since it will not be presumed that the legislature intended to punish criminal acts committed in ignorance, by accident or under claim or right. State v Larson 145 N.E. 2d 502.

The Constitution safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial in a courtroom presided over by a Judge. Rideau v Louisiana 373 US 723. . . . and to perform its high function in the best way, justice must satisfy the appearance of justice. Murchison, RE, 349 U.S. 133.

Judge Gilliece knew or should have known that he had no jurisdiction in 78-X-45, on July 15, 1980. App. P. 7A. His styling of the case as 78-X-1186 and naming Appellant as defendant are admissions of error.

The affirmance (or dismissal) of a Judgment ends the case in the Appellate Court and deprives it of all power to add to or alter records as certified by rescinding the order of affirmance and dismissing the appeal. (Or refer case back to trial court, without remand.) Realty Acceptance Corp. v Montgomery 284 US 547.

No cases, state or federal, can be cited to support the action taken by the Kenton Circuit Court on July 15, 1980 (App. P. 7A, 39A), or the Kenton District Court on July 18, 1980 (App. P. 9A).

Thus, those efforts should be reversed as being in contravention of Appellant's constitutional rights and repugnant to the U. S. Constitution 4th, 8th, and 14th Amendments.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted,

Eddie Thompson Jr.
EDDIE THOMPSON, JR., Pro Se

KENTON CIRCUIT COURT
NUMBERS: 78-M-1186/78-X-45
78-M-2912/79-X-43

EDDIE THOMPSON, JR. — APPELLANT-DEFENDANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE-PLAINTIFF

FILED IN CLERK'S OFFICE
MAR 11 1981
ED F. SCHROEDER, Clerk

NOTICE OF APPEAL
TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Eddie Thompson, Jr., the appellant above named, hereby appeals to the Supreme Court of the United States from the Final Order dismissing his appeals from the Kenton District Court (78-M-1180, 78-M-2912) Kenton Circuit Court Numbers 78-x-45, 79-X-43, respectively, entered on July 15, 1980; Motion to Alter, Amend, Vacate, Set Aside, or Correct overruled July 29, 1980; Discretionary Review denied by Kentucky Court of Appeals October 20, 1980; Discretionary Review denied by Kentucky Supreme Court February 13, 1981.

Number 78-X-45 had been previously dismissed by the Kenton Circuit Court on February 22, 1979, Motion for Reconsideration overruled March 8, 1979; Motion to Modify overruled March 15, 1979; Discretionary Review was denied by Kentucky Court of Appeals on June 25, 1979; Discretionary Review was denied by Kentucky Supreme Court on October 23, 1979; Writ of Certiorari denied by the United States Supreme Court on February 19, 1980.

This Appeal is taken pursuant to 28 U.S.C. 1257(1) and (2).

Eddie Thompson Jr.

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41011
(606) 491-6278

KENTON CIRCUIT COURT
NUMBERS: 78-M-1186/78-X-45
78-M-2912/79-X-43

EDDIE THOMPSON, JR. — APPELLANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE

FILED IN CLERK'S OFFICE
MAR 11 1981
ED F. SCHROEDER, Clerk

REQUEST CLERK TO TRANSMIT RECORDS
TO THE UNITED STATES SUPREME COURT

TO: Mr. Ed Schroeder, Clerk of Kenton Circuit Court.

Pursuant to the provisions of Rule 13.1 of the Rules of the Supreme Court of the United States, you are requested to certify and transmit to the Supreme Court of the United States the records on Appeal in the above mentioned case and the Notice of Appeal filed herewith.

Eddie Thompson Jr.

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41011
(606) 491-6278

CERTIFICATION:

I hereby certfy that a copy of the foregoing Notice has been served upon Mr. Martin J. Huelsman, Assistant Kenton County Attorney, Judge Douglas Stephens, Kenton District Court, City-County Building, Covington, Kentucky 41011; and Mr. Steve Beshear, Attorney General, Frankfort, Kentucky 40601, this 11 day of March 1981.

Eddie Thompson Jr.

EDDIE THOMPSON, JR., Pro Se

Office of the Clerk
SUPREME COURT OF KENTUCKY
State Capitol Frankfort, 40601

John C. Scott
Clerk

Room 209
(502) 564-4720

CERTIFICATION

I, John C. Scott, Clerk of the Supreme Court of Kentucky, do hereby certify that the attached Order Denying Discretionary Review, entered February 13, 1981, in the matter of Eddie Thompson, Jr. vs. Commonwealth of Kentucky, File Nos. 80-SC-733-D and 80-SC-734-D, Court of Appeal File Nos. 80-CA-1618-D and 80-CA-1619-D, Kenton Circuit Court Nos. 78-X-45 and 79-X-43, is a true and correct copy of the original order as it appears on file in my office.

Done this 27th day of February, 1981, at Frankfort, Kentucky.

JOHN C. SCOTT
CLERK

BY: Betty Whitton
Betty Whitton
Chief Deputy Clerk

Supreme Court of Kentucky

80-SC-733-D and 80-SC-734-D
(80-CA-1618-D and 80-CA-1619-D)

EDDIE THOMPSON, JR. — MOVANT

V.

KENTON CIRCUIT COURT
79-X43 and 78-X-45

COMMONWEALTH OF KENTUCKY — RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motions of Eddie Thompson, Jr., for a review of the decision of the Court of Appeals is denied.

ENTERED February 13, 1981.

Chief Justice

Commonwealth Of Kentucky

Court Of Appeals

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR. — APPELLANTS

v. APPEAL FROM KENTON CIRCUIT COURT
ACTION NO. 33430

PEOPLES LIBERTY BANK — APPELLEE

* *

ORDER

(1) DENYING MOTION TO DISMISS
(2) DENYING MOTION TO FILE LATE RESPONSE AS MOOT

BEFORE: HOWERTON, REYNOLDS, AND WHITE, JUDGES.

The appellee has moved to dismiss the above-styled appeal upon the ground that the appeal is frivolous. It appearing to the Court that a disposition of the motion requires a consideration of the merits of the appeal, the motion to dismiss is DENIED. Inasmuch as the motion to dismiss has been denied, the appellants' motion for leave to file a late response to the motion to dismiss is DENIED as being moot.

ENTERED: January 18, 1980

JUDGE, COURT OF APPEALS

Ex. J

Commonwealth Of Kentucky

Court Of Appeals

NO. 80-CA-1618-D

EDDIE THOMPSON, JR. — MOVANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE JAMES J. GILLIECE, JUDGE
ACTION NO. 78-X-45

COMMONWEALTH OF KENTUCKY — RESPONDENT

* *

ORDER DENYING DISCRETIONARY REVIEW

BEFORE: WHITE, COOPER, and BREETZ, Judges.

The Court, having considered the motion for discretionary review and being otherwise sufficiently advised, ORDERS that it be and is hereby, DENIED.

ENTERED: October 20, 1980

John L. Breetz
JUDGE, COURT OF APPEALS

EX. 6

FILED IN CLERK'S OFFICE

JUL 15 1980

ED. F. SCHROEDER, Clerk

KENTON CIRCUIT COURT

FOURTH DIVISION

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS. — JUDGMENT — 78-X-1186

EDDIE THOMPSON, JR. — DEFENDANT

* * * * *

The Supreme Court of Kentucky having denied Defendant's motion for discretionary review, all previous orders of the District and Circuit Court stand and shall be complied with.

JAMES J. GILLIECE, JUDGE

Copies:

Hon. J. Elfers
County Attorney

Mr. E. Thompson

District Court

Ex H

KENTON CIRCUIT COURT

FOURTH DIVISION

COMMONWEALTH OF KENTUCKY — PLAINTIFF

VS. — ORDER — #78-X-45

FILED IN CLERK'S OFFICE
JUL 29 1980
ED. F. SCHROEDER, Clerk

EDDIE THOMPSON, JR. — DEFENDANT

The motion of the Defendant to alter, amend, vacate, set aside or correct the Judgment is OVERRULED.

JAMES J. GILLIECE, JUDGE

Copies:
Hon. J. Elfers
Mr. Thompson
District Ct. Clerk

I

AOC-78-202

Commonwealth of Kentucky
Court of Justice

CRIMINAL SUMMONS

Case No. 78-M-1186 -2912
79-M-5251

County KENTON

Court 716100

COMMONWEALTH OF KENTUCKY

.VS.

Eddie J. Thompson DOB 12-5-35

309 Pleasant St. or 629 Greenup Sts.

Covington, Ky.

KRS _____, _____,

_____, _____

IF YOU FAIL TO COMPLY WITH THE ORDER OF COURT, YOU MUST APPEAR AT THE TIME AND PLACE STATED BELOW OR BE SUBJECT TO THE CONTEMPT POWER OF THE DISTRICT COURT.

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the KENTON DISTRICT COURT, 3rd & Court Sts. City-County Bldg. 4th Floor, Cov., Ky. Room 4-A Court

on Friday August 1st, 19 80, at 2:00 P.M.

To respond to the following criminal charges:

NOTE; If served, please put on Show Cause Docket on date designated above.

SHOW CAUSE Failure to pay fine or Court costs

Failure to comply with Order of the Court

Failure to report to Comprehensive Care Center

Appeal cases remanded back to District Court

78-M-1186 - Fines $320.50

78-M-2912 - Fine 520.50

79-M-5251 - Fine 280.50

Total $ 1,121.50

Date: 7-10-80 XXXXXX ED F. SCHROEDER

_____ D.C.

PROOF OF SERVICE

This summons was served by delivering a true copy.

To: _____

this _____ day of _____, 19____.

Served By: _____

Title _____

See: RCr 2.04, 2.06

80-6341

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980

RECEIVED
MAR 16 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

EDDIE THOMPSON, JR. — APPELLANT-DEFENDANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE-PLAINTIFF

ON APPEAL FROM KENTON CIRCUIT COURT
SECOND DIVISION

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Eddie Thompson Jr.
EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41011
(606) 491-6278

CERTIFICATION:

I hereby certify that a copy of the foregoing Motion has been served upon Mr. Martin J. Huelsman, Assistant Kenton County Attorney, Judge Douglas Stephens, Kenton District Court, City-County Building, Covington, Kentucky 41011; and Mr. Steve Beshear, Attorney General, Frankfort, Kentucky 40601, this 12 day of March, 1981.

Eddie Thompson Jr.
EDDIE THOMPSON, JR., Pro Se

RECEIVED
MAR 16 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

80-6341

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980

EDDIE THOMPSON, JR. — APPELLANT-DEFENDANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE-PLAINTIFF

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant, Eddie Thompson, Jr., moves this Court for an Order permitting him to proceed in this Court, in forma pauperis, with his Appeal from the Judgments of the Kenton Circuit Court entered on July 15, 1980, Motion to Alter, Amend, Vacate, Set Aside or Correct overruled on July 29, 1980; Discretionary Review by Kentucky Court of Appeals denied on October 20, 1980; Discretionary Review denied by Kentucky Supreme Court on February 13, 1981.

Pursuant to the provisions of Title 28, United States Code, Section 1915, and Rule 46 of the Rules of this Court and in support thereof, Appellant's Affidavit is attached.

Eddie Thompson Jr.

EDDIE THOMPSON, JR., Pro Se
736 Highland Avenue
P.O. Box 1221
Covington, Kentucky 41011
(606) 491-6278

CERTIFICATION:

I hereby certify that a copy of the foregoing Motion has been served upon Mr. Martin J. Huelsman, Assistant Kenton County Attorney, Judge Douglas Stephens, Kenton District Court, City-County Building, Covington, Kentucky 41011; and Mr. Steve Beshear, Attorney General, Frankfort, Kentucky 40601, this 12 day of March 1981.

Eddie Thompson Jr.

EDDIE THOMPSON, JR., Pro Se

RECEIVED
MAR 16 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

80-6341

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1980

EDDIE THOMPSON, JR. — APPELLANT

VS.

COMMONWEALTH OF KENTUCKY — APPELLEE

AFFIDAVIT

I, Eddie Thompson, Jr., being first duly sworn, depose and say that I am the Appellant in the above-entitled case, that in support of my Motion to Proceed on Appeal, without being required to pre-pay fees, cost, or to give security, therefore, I state that because of my poverty, I am unable to pay the cost of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present are as follows:

1. That I was denied an Appeal (as a matter of right, Kentucky Constitution, Section 115).
2. That the records were tampered with in the trial Court (Kenton District Court).
3. That the complete original records in the trial Court (Kenton District Court) were never indexed and forwarded to the Court of Appeals (Kenton Circuit Court) as required by law (CR. 72.04, 75.04, 75.07(10); R.Cr. 11.04).
4. That the Court permitted improper arguments to the jury.
5. That there was no evidence to submit cases to the jury.

I further swear that the Response I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the Appeal are true.

1. Are you presently employed?

   No.

   Last employer, B. F. Shaw Company, East Bend Power Station, Rabbit Hash, Kentucky.

   Last date of work, October 31, 1980.

   Bring-home pay, approximately $1400 per month.

2. Have you received within the past twelve months any income from business, professional or other forms of self-employment, or in the form of rent payments, interests, dividends, or other source?

No.

3. Do you own any cash, checking, or savings accounts?

Yes.

Savings account, $40.00.

4. Do you own any real estate, stocks, bonds, notes, automobile, or valuable property?

A. Petitioner owned and/or had an interest in four (4) pieces of property before Peoples Liberty Bank illegally foreclosed on three (3) of the properties and slandered Appellant's credit rating.

The fourth property located at 309 Pleasant Street was leased out under H.U.D.'s Section 8A Rent Subsidy Program. The City withheld the rent for three (3) years (No legitimate reason). Appellant paid all the utilities for this family those three years. The family moved in August 1980. However, the property now needs substantial repairs (estimated at $5,000). With the repairs done, the property should be worth $12,000. Appellant owes $2300.00 plus the 1980 real estate tax.

An unimproved lot worth $1000.00 -- uninsured house burned down -- lot needs grading -- 1980 real estate tax due.

Appellant owes a bank note of $3000.00 on business equipment/tools stolen from my home at 736 Highland Avenue.

B. 1966 Ford truck -- value, $200.00

1972 Buick -- value, $300.00

1972 Opel -- value, $300.00, provided for daughter (who does not reside at home) for transportation to and from school, Northern Kentucky University.

C. All of Appellant's (as well as all other members of his family) household furnishings, clothing, business tools, records and other personal items were stolen from his home at 736 Highland Avenue by persons unknown to Appellant, but who were allegedly hired by an attorney, Mr. Richard Slukich.

5. List the persons who are dependent upon you for support and state the relationship of those persons.

   Patricia Thompson - Wife

   Kelly Thompson - Daughter, age 10

   Delores Thompson - Daughter, age 22, only provides car to get to and from school, does not live at home.

6. Any effort to seek leave to proceed in forma pauperis in the State court would be futile. Appellant has complied with all the State Rules and paid the cost; yet, he has been denied an appeal as a matter of right.

7. If I become able to pay any of the cost herein incurred, I will make restitution thereof.

8. I understand that any false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

Eddie Thompson Jr.
Eddie Thompson, Jr.

Subscribed and Sworn to before me this 11 day of March, 1981.

Walter L. Whatley
Notary

My Commission Expires:

December 17, 1983